

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK  
UNITED STATES DISTRICT JUDGE

## SENTENCING

June 9, 2022

John J. Moakley United States Courthouse  
Courtroom No. 1  
One Courthouse Way  
Boston, Massachusetts 02210

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## 1 P R O C E E D I N G S

2 (The following proceedings were held in open court  
3 before the Honorable Douglas P. Woodlock, United States  
4 District Judge, United States District Court, District of  
5 Massachusetts, at the John J. Moakley United States Courthouse,  
6 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on  
7 June 9, 2022.)

8 (Case called to order.)

9 THE COURT: Well, I'm not sure that we can -- in fact,  
10 I'm certain that we can't conclude today. There are a number  
11 of open questions here, and I think I want to identify them. I  
12 to have to say that the question with respect to the will in  
13 Norfolk is quite fundamental to me.

14 And so I guess the first question is, what's going on  
15 there? Has it just been filed and nobody's pressing the issue?

16 MR. MORAN: I can take the first shot at that  
17 question, Your Honor. Present in the courtroom is Attorney  
18 Janet Wallace. She represents -- and she'll, I hope, correct  
19 me if I'm wrong. I should add probate is not my area. If I  
20 have an area of expertise, it's certainly not probate. She  
21 represents Andrew Walshe, who has been appointed the personal  
22 representative of the estate of Thomas Morecroft Walshe.

23 THE COURT: Right.

24 MR. MORAN: What I understand from my conversations  
25 with Attorney Wallace and from having reviewed the record is

1 that Mr. Brian Walshe, the defendant before Your Honor, has a  
2 statutory obligation to --

3 THE COURT: Trust me, I think I understand the  
4 background. What's happening in the probate court? Is it just  
5 sitting there?

6 MR. MORAN: I think it's just sitting. The home in  
7 Hull was not sold. The stuff, the physical items and other  
8 personal possessions of Mr. Thomas Walshe have been sold, but  
9 we believe that the proceeds are with Mr. Brian Walshe and that  
10 hasn't progressed any further.

11 So they have affected service and he just hasn't  
12 responded, so my understanding is it sits. I think the next  
13 step could be for the personal representative to press a  
14 criminal suit in Norfolk County. But to be honest, Your Honor,  
15 I don't know if there would be much prospect of getting --

16 THE COURT: Oh, I think there's another way of dealing  
17 with it.

18 MR. MORAN: Yes, which --

19 THE COURT: We're going to have a hearing on it. This  
20 is the most serious kind of allegation, and whether the probate  
21 court for whatever reason isn't advancing it, it is fundamental  
22 here. So, Ms. Miner.

23 MS. MINER: Your Honor, if I may please just tell you  
24 about what I understand the status is, and I'm not a probate  
25 lawyer either.

1                   THE COURT: That may be so, but I think perhaps both  
2 of you are going to develop some expertise in the subject  
3 matter that the probate court has to deal with, and someone who  
4 forges or pursues a will without the authorization to do so and  
5 evades service is something that I think any lawyer can deal  
6 with as a matter of a contest or a question of fact.

7                   MS. MINER: Your Honor, I will deal with whatever I  
8 have to deal with. You know me, I will be prepared. I just  
9 preface with what I can tell you now from what I know.

10                  Mr. Walshe has an attorney in the probate court  
11 matter. He has had that attorney for a number of years now. I  
12 spoke to that attorney. It's Attorney Porcelli, Anthony  
13 Porcelli, who has a notice of appearance and is listed on the  
14 docket in the probate court matter who was unaware of any of  
15 this.

16                  THE COURT: Unaware of what?

17                  MS. MINER: Unaware of any of this. He was not aware  
18 that he was ordered to file a -- he was never served with a  
19 copy of the order. He did not know anything about anything  
20 other than --

21                  THE COURT: Does he have an appearance in the case?

22                  MS. MINER: He does.

23                  THE COURT: Does he ever look at the docket?

24                  MS. MINER: I can't answer that, Your Honor.

25                  THE COURT: Okay. Does he have a client?

1 MS. MINER: He does.

2 THE COURT: Who is the client?

3 MS. MINER: The client is Brian Walshe.

4 THE COURT: Has he talked to his client?

5 MS. MINER: I don't believe they've talked to each  
6 other until this whole issue arose.

7 THE COURT: Well, okay. There is one way of looking  
8 at it, which is, don't ask, don't tell.

9 MS. MINER: Your Honor, if I may.

10 THE COURT: Hold on just a moment, if I may.

11 MS. MINER: Certainly.

12 THE COURT: This view that things can be avoided in  
13 various ways, not responded to in various ways, is not the way  
14 I'm going to deal with this. I was fairly straightforward  
15 about what I was going to do in this case, and principally  
16 because there are victims, quite apart from those who require  
17 restitution, and I want to be sure that those victims are  
18 properly taken care of. But what I have now is a set of  
19 circumstances in which the victims are being used as a shield  
20 from careful analysis of the sentencing issues.

21 Apparently, the mother has moved out of the  
22 jurisdiction, leaving Mr. Walshe the responsibility of taking  
23 care of those children. But also it would appear she has  
24 assets and receives assets in various sorts of ways. It would  
25 appear that Mr. Walshe's mother is prepared to provide funds at

1 various times, or not. And the question for me is whether or  
2 not I am able properly to -- one of the questions is whether  
3 I'm able properly to fund the restitution in this case or, more  
4 accurately, the defendant is. There is reason to believe that  
5 he is. But it requires perhaps talking to whatever lawyers he  
6 has about whatever assets he has access to and could  
7 meaningfully have access to.

8                   What I do know is that the response with respect to  
9 the objections to the Presentence Report are not persuasive,  
10 although I'll hear argument about that.

11                  But I'll tell you two things that I'm planning.  
12 Number one, I want to find out what's going on in the probate  
13 court. And since I'm told that nothing is going on in the  
14 probate court, we're going to probably have a trial over  
15 whether or not there was an improper presentation of a will and  
16 appropriation of the assets of the estate. That's one thing  
17 that we'll probably be dealing with here, irrespective of  
18 whether or not the person who files an appearance on behalf of  
19 the defendant doesn't talk to him about what's going on. Maybe  
20 this is the time that they get to know each other a little bit  
21 better.

22                  The second is to get my hands on the question of what  
23 the real restitution is in this area in terms of actual dollar  
24 figures in light of the government's report, which I  
25 understand, although I'm not particularly pleased with, and

1 that is that the government isn't able to pursue further or  
2 doesn't believe that it would be productive to pursue further  
3 the recovery of certain of the paintings that Mr. Walshe  
4 apparently provided some information with respect to.

5 So it's not available there. So I would like to know  
6 what restitution amounts we're talking about.

7 MR. MORAN: Your Honor, with respect to question one  
8 that you've just outlined, may I have a moment to confer with  
9 Attorney Wallace? Because I think part of those questions may  
10 have been answered in the state court, and with an eye towards  
11 perhaps narrowing the scope of what you may want --

12 THE COURT: Yes.

13 MR. MORAN: -- if I may have a moment to confer with  
14 her.

15 THE COURT: Yes.

16 (Counsel discussion off the record.)

17 MR. MORAN: Thank you, Your Honor, for the moment.  
18 Having your particular questions in mind was helpful in terms  
19 of, I had spoken to Attorney Wallace a couple of times.

20 THE COURT: Right.

21 MR. MORAN: So what I've learned from her is that the  
22 probate court, Judge Roberts, did admit what I'm calling the  
23 cell phone will to probate. She also removed Mr. Brian Walshe  
24 as the personal representative. Those are both findings of the  
25 court.

1                   THE COURT: I don't have copies of those findings,  
2 right?

3                   MR. MORAN: I don't think so.

4                   THE COURT: When was this done?

5                   MR. MORAN: My understanding is that it took place in  
6 two parts. First, she appointed Andrew Walshe as the special  
7 personal representative. That took place on July 17, 2019.  
8 That appointment was also the removal of Mr. Brian Walshe as  
9 the personal representative.

10                  THE COURT: Right. I have all of that material.

11                  MR. MORAN: Correct. So there is no specific -- the  
12 probate court did not make a specific factual finding about  
13 what happened. So I think that's what Your Honor is asking  
14 about.

15                  THE COURT: Of course. I mean, what has allegedly  
16 transpired is that someone who had no right to do so took  
17 possession of assets of the estate for his own personal  
18 benefit. That's the allegation.

19                  MR. MORAN: The other --

20                  THE COURT: If I may. And apparently, unless there's  
21 something that someone is going to tell me in the next five  
22 minutes, there has been no action in the state court with  
23 respect to that.

24                  MR. MORAN: Well, that I can answer a little bit  
25 better with the help of Attorney Wallace. The rest of the

1 estate has progressed, so she has caused the sale of the Hull  
2 property and another property that Mr. Thomas Walshe owned in  
3 Montserrat and has disbursed those funds to the heirs.

4 THE COURT: So the property in Hull has been sold?

5 MR. MORAN: The real property. What I guess would be  
6 under -- what we would need to find out from Mr. Brian Walshe  
7 was the personal property and the bank accounts.

8 THE COURT: Right.

9 MR. MORAN: So it didn't stop altogether, but there is  
10 still the open question which Your Honor was raising. I just  
11 wanted to put more flesh on the bone, so to speak.

12 THE COURT: I'm not sure that's the body of material  
13 that's been put on the bones.

14 MR. MORAN: Well, at least I have a little more  
15 detail. It does not answer Your Honor's ultimate question, but  
16 I wanted to --

17 THE COURT: We have someone who has alleged, contends  
18 he doesn't have access to funds. We have materials that  
19 suggest that he does. And they've been the subject of a  
20 proceeding in the state court for some period of time as to  
21 which apparently nothing more has been done on this discrete  
22 issue.

23 And of course I have received affidavits from those  
24 who challenged Mr. Walshe's efforts to be the personal  
25 representative in that matter. But there's some amount of

1 money that can be identified, I suppose, if it was in fact  
2 accessed by him. And that has not even been resolved. All I  
3 have is allegations here, allegations and pictures.

4 MR. MORAN: Yeah, sworn allegations, Your Honor, but  
5 yes.

6 THE COURT: I mean, sworn allegations have a way of  
7 just beginning, not ending, the conversation.

8 MR. MORAN: His removal as the personal  
9 representative, he was a party to that action, so he had an  
10 opportunity to confront them in that --

11 THE COURT: He may. He's not the personal  
12 representative, okay, fine. But what did he do, what did he  
13 take, that kind of thing, that hasn't been resolved, for  
14 whatever reason hasn't been resolved, unless, as I said,  
15 there's something missing here.

16 So right now I'm going figure it out, and I think it's  
17 going to be a trial over the question of whether or not there  
18 was wrongful appropriation of the estate, assets of the estate.

19 MR. MORAN: Your Honor, with respect to the second  
20 question Your Honor raised regarding the correct amount of  
21 restitution, it's obviously not binding on Your Honor, but we  
22 did --

23 THE COURT: Let's recite it again because the victims  
24 have, at least in the case of Victim Number 2, there was some  
25 question about recovery of those paintings. I am assuming that

1 those paintings cannot -- I'm saying "paintings" broadly --  
2 those paintings can't be recovered. So what is the restitution  
3 amount that we would be dealing with? We did settle on Victim  
4 1, but let's recite it again. Victim 1 would be how much?

5 MR. MORAN: \$50,000.

6 THE COURT: All right.

7 MR. MORAN: Victim 2 should be \$280,000. That's 240  
8 for the two Shadows, which was the price that Victim 1 paid for  
9 them, and 40,000 for the Dollar Sign, which was the last --  
10 which was at the time the last third-party sale.

11 THE COURT: Right.

12 MR. MORAN: And then Victim 3, the gentleman in  
13 France, was \$145,000. That was based on the sale.

14 THE COURT: Right.

15 MR. MORAN: So I think, subject to Your Honor's  
16 approval, of course, I think the parties are, on the basis of  
17 the plea agreement, in agreement those are the amounts that  
18 should be used for --

19 THE COURT: Okay. Well, I haven't explored valuation  
20 in detail, but that appears to be what we're talking about  
21 here, what the parties were talking about, if it's monetized.

22 Now, the defendant seems to suggest he doesn't have  
23 access to that kind of money. Maybe that's true. But maybe  
24 it's not, and maybe what the defendant is doing is engaging in  
25 a process of manipulation that suggests that he's acknowledging

1 his responsibility but sorry he can't pay for it. But we have  
2 that figure.

3 Then we have the -- I'm looking now at the  
4 government's recommendation at page 8 of the government's  
5 supplemental sentencing memorandum, only one portion of which,  
6 by the way, is under seal. The rest of it is not. I have a  
7 request for entries of orders of forfeiture here. It doesn't  
8 seem to me there is any reason I can't enter those orders of  
9 forfeiture now, is there?

10 MR. MORAN: No, I think that's correct, Your Honor. I  
11 think Your Honor entered the order --

12 THE COURT: I did.

13 MR. MORAN: -- with respect to the physical paintings.  
14 Outstanding would be the order with respect to the money  
15 judgment.

16 THE COURT: Right. And I don't know why I wouldn't.

17 MR. MORAN: I agree, Your Honor. I don't think  
18 there's any reason not to.

19 THE COURT: Okay. So I'm trying to get this to a  
20 liquidated figure so that those who are periodically providing  
21 support or alleged to understand what it is that is the real  
22 obligation, monetizable obligation that Mr. Walshe has, put to  
23 one side what else happens in the sentencing of this.

24 Any dispute that the orders of forfeiture could be  
25 entered, Ms. Miner?

1 MS. MINER: No, Your Honor.

2 THE COURT: Okay. So we'll do that, to the degree  
3 that a preliminarily order of forfeiture hasn't already been  
4 entered in any event on this.

5 So then we have a special assessment of \$300, I  
6 understand that. And we have the government's recommendation  
7 with respect to particular amounts.

8 Now, there's another dimension to it. That is that  
9 the defendant seems to profess that he didn't understand what  
10 was called for by the financial report that was supposed to be  
11 supplied. It's a little hard for me to believe that he  
12 couldn't. He's an intelligent man, unless he willfully misread  
13 it.

14 But now he does know what Probation requires. I want  
15 it restated as of the date that he filed it with this newfound  
16 insight that apparently he has about what his obligations are.  
17 And I want a financial statement in the same form with the same  
18 understanding filed as of today or tomorrow regarding  
19 everything thereafter.

20 He's been involved in a variety of different  
21 activities, if I'm to believe the government's submission since  
22 the filing of that original statement. I want to understand  
23 what access the defendant has to various kinds of monies here  
24 within his family, within the filings that are made or  
25 submissions that are made to banks and to others.

1           But I do want to talk about one thing in particular  
2 which was the triggering factor that stopped the sentencing  
3 hearing. It's difficult for me to read the materials that the  
4 parties have submitted clearly, but it does appear that there  
5 were sufficient funds in that account. Any dispute about that,  
6 Mr. Moran?

7           MR. MORAN: I think that's right, Your Honor. I think  
8 it was actually more of a timing issue. I'm going to look over  
9 my shoulder to Special Agent Coke who is in the courtroom to  
10 correct me.

11           THE COURT: Here is the issue I'm trying to get  
12 straight, that you have a bank official with cold feet who  
13 issues a treasurer's check and is a little concerned that  
14 they've done it and they shouldn't have, for whatever internal  
15 reasons. But if someone were to enforce that, for instance,  
16 some recipient of the treasurer's check, I'm not sure that  
17 there would be any defense on the part of the bank itself.

18           MR. MORAN: I think you're correct. If I'm hearing  
19 you correctly, the bank could not have stopped the cashier's  
20 check.

21           THE COURT: Right. And there's two parts to that.  
22 They couldn't have stopped the cashier's check, although I did  
23 because the recipient of that bank check was this court, and I  
24 did not want to introduce yet another dimension of potential  
25 liability on the part of the defendant here or the bank itself,

1 so I stopped it.

2                   But now looking at the underlying materials, and I do  
3 want you to be able to talk to the agent about this. My  
4 reading of it is that there were sufficient funds in there  
5 anyway.

6                   MR. MORAN: Yes, I think Your Honor is correct.

7                   THE COURT: So if, for example, the person who drew  
8 the bank cashier's check had a cause of action, that would  
9 presumably be Mr. Walshe, he would have been able to go to the  
10 bank and say, "You were wrongfully withholding on this."

11                  We'll put to one side UCC problems on this. I just  
12 want to be sure that I am not missing something when I say that  
13 there was sufficient -- or say it appears that there were  
14 sufficient funds in the account at the time.

15                  MR. MORAN: I think you're right, yes. I think that's  
16 correct. One moment, Your Honor.

17                  (Attorney Moran confers with Agent Coke.)

18                  MR. MORAN: Agent Coke has refined my understanding,  
19 but I think, in summary, Your Honor is correct. I don't think  
20 -- as a UCC matter, I don't think the bank --

21                  THE COURT: I shouldn't have introduced that.

22                  MR. MORAN: I think because of the timing, the bank  
23 was within its rights to freeze things. But ultimately, it was  
24 a matter of timing that the banks carve out a certain number of  
25 days for checks to cash. I think the bank was correct that at

1 the moment there wasn't the right amount of time but where we  
2 are right now, yes.

3 THE COURT: Well, banks like to take advantage of  
4 float.

5 MR. MORAN: Exactly.

6 THE COURT: Whether they have the right to do that and  
7 what right they have under the UCC or whether or not they're  
8 continuing to engage in their own form of expropriation is  
9 another matter. But funds have been placed in the account at  
10 that time, and whether or not they could be within their rights  
11 to deny it is another matter.

12 MR. MORAN: Correct.

13 THE COURT: Okay.

14 MR. MORAN: I think I agree with your assessment of  
15 the facts.

16 THE COURT: Okay. So I've got that part of it clear.  
17 That doesn't necessarily mean that the defendant is without  
18 knowledge of various of these matters, but I want to be clear  
19 about what other victims might be involved, and I don't view  
20 the bank as a victim under these circumstances.

21 So then I go to the question of how to resolve the  
22 objections that are made to the Presentence Report. And my  
23 view is I will do that after review of the filing of the  
24 restated financial report and the updated financial report so  
25 that I understand and Mr. Walshe understands fully that he has

1 to be candid with the court, that he cannot engage in this kind  
2 of process of, Oh, I just didn't understand. Now it's clear.

3 And that similarly goes for this question of the  
4 responsibility for the -- any misappropriated elements of the  
5 estate, whether that's been pursued further in the probate  
6 court because I'm going to resolve it here, I have to here.

7 So what do we need for time?

8 MS. MINER: If we could have eight weeks.

9 THE COURT: Eight weeks?

10 MR. MORAN: August is fine with me, Your Honor. I  
11 think my witnesses for that hearing would be Andrew Walshe and  
12 Mr. Ornstein and perhaps Attorney Wallace. She's in the  
13 courtroom. I'm going to ask her if she's aware of any  
14 conflicts, or if she's spoken to Mr. Andrew Walshe and is aware  
15 of any conflicts. Obviously people -- when you pick a date,  
16 people will have to plan accordingly, but since we're on the  
17 front end, if I may make that inquiry.

18 THE COURT: Okay. Well, I think your inquiry should  
19 be whether or not there are any other witnesses and their  
20 availability for depositions because I'm going to permit  
21 deposition examination if the parties want it.

22 This is something I'm going to resolve on the basis of  
23 what we call a fair preponderance of the evidence, but it's  
24 more likely than not. That's the same standard I believe in  
25 the state court but maybe not. In any event, that's what I'm

1 going to be resolving it on because this is essentially a  
2 question of whether or not there's been misrepresentation to  
3 the court.

4 MR. MORAN: I'm not sure if depositions and testimony  
5 before Your Honor is necessary. We don't --

6 THE COURT: You mean what I should do is sit through  
7 what amounts to examination that consists of "And then what  
8 happened?"

9 MR. MORAN: Well, no, I would -- with their  
10 permission, I would prepare them and I would be much more  
11 efficient than that, Your Honor.

12 THE COURT: And for cross-examination?

13 MR. MORAN: They've already provided affidavits, so  
14 we're not operating -- I think a deposition would maybe make  
15 more sense if we were operating in a vacuum, but they've  
16 already provided affidavits so I think -- and obviously I would  
17 present *Jencks* material to the extent I can acquire it in the  
18 normal course.

19 THE COURT: Is there anything that would be *Jencks*  
20 material other than what's been submitted by your --

21 MR. MORAN: I don't believe so, but it would be my  
22 obligation to inquire.

23 THE COURT: Oh, yes.

24 MR. MORAN: I don't believe so, but I haven't done  
25 that yet, so I don't know that.

1                   THE COURT: So inquire of Attorney Walshe, if I have  
2 it right.

3                   MR. MORAN: Wallace.

4                   THE COURT: Excuse me. Wallace. I'm in the W's in  
5 the telephone book right now, and I'm missing the distinctions.  
6 Inquire of Attorney Wallace if there are any other percipient  
7 witnesses with respect to this that would be offered in this  
8 matter, but I want to make a resolution, a factual resolution  
9 here. And that factual resolution is critically important to  
10 the sentence that I impose.

11                  MR. MORAN: Yes, Your Honor.

12                  MS. MINER: Your Honor, we would obviously like the  
13 ability to depose witnesses.

14                  THE COURT: You may. The question for me is whether  
15 or not I extend things even further.

16                  MS. MINER: Thank you.

17                  (Counsel discussion off the record.)

18                  MR. MORAN: Your Honor, thank you very much for the  
19 chance to inquire. I think that was very helpful.

20                  What Attorney Wallace explains to me is that there  
21 actually were two actions. There was an equity action first.  
22 Mr. Brian Walshe appeared personally in that action. Never  
23 actually appeared personally in what I'll call the will action.  
24 Both were pending in Plymouth Probate and Family court.

25                  So I think my witnesses would be -- in the equity

1 action, there were actually some live evidentiary hearings, so  
2 obviously I'll have to get the transcripts of those, but it's  
3 another reason perhaps we don't need depositions. It seems  
4 like we are working off some already-tilled ground.

5 So my witnesses I believe will be Andrew Walshe, who  
6 just had a baby, but Attorney Wallace thinks by August he  
7 should be okay -- he does not live in Massachusetts, Jeffrey  
8 Ornstein who was the close friend of Mr. Thomas Walshe, Dr.  
9 Fred Pescatero, he initiated the equity action. He's also  
10 represented by counsel. And then the constable whose affidavit  
11 was in my submission. So I think that would be four witnesses  
12 at the same time.

13 I would hope to make them -- thinking about how much  
14 time it would take, someone like the constable I don't think  
15 would be very long, so I'm hopeful that we could move  
16 expeditiously through this. That would be my goal.

17 THE COURT: All right. Well, Ms. Miner, what would  
18 you have by way of witnesses?

19 MS. MINER: Your Honor, I don't know. I mean, the two  
20 people --

21 THE COURT: I understand that. On the other hand, I  
22 want to know --

23 MS. MINER: Certainly.

24 THE COURT: -- at a certain point. So what I would  
25 like is for the parties to tell me, let's say by next Tuesday,

1 who the witnesses are and their availability, make more  
2 specific inquiries. If we have to take them one by one at  
3 different times, I'll do that in this case. If there's a  
4 transcript, I've never seen it.

5 MR. MORAN: I have not either.

6 THE COURT: I'm not sure that there's a transcript  
7 that's yet been prepared. Maybe Attorney Wallace knows whether  
8 there is.

9 MR. WALLACE: Your Honor, they're not prepared, but  
10 they're available. I can request them at any time.

11 THE COURT: How long does it take ordinarily?

12 MR. WALLACE: A week, then I would have to have it  
13 transcribed, so another two weeks to have it transcribed. You  
14 can get the actual hearing itself.

15 THE COURT: Right, but I'd want a transcript for a  
16 record in this case, but it's the -- as it's done now in the  
17 probate court, and like the lawyers here, it's been a long time  
18 since I've been in the probate court, but they give you a tape,  
19 and then you're required -- not required but you get your own  
20 court reporter to do the transcription for you rather than  
21 them, that is, the court providing a transcription?

22 MR. WALLACE: The court only provides a verbal. They  
23 don't provide a written transcription, so that has to be  
24 transcribed by a court stenographer, and we have to pay those  
25 costs.

1                   MR. MORAN: I can have the government order it, Your  
2 Honor.

3                   THE COURT: Right, because I consider that to be the  
4 government's responsibility. But I would like both of those.  
5 We'll have both versions of it. But for our purposes, for  
6 trial purposes and for *Jencks* purposes, I want to have a  
7 transcription.

8                   MR. MORAN: Yes, Your Honor. It actually occurs to  
9 me, it may be that we might, in terms of expenditure of  
10 resources, we might avoid or at least avoid a hearing or at  
11 least narrow the issues based on what's already been adduced at  
12 the probate court, which was sworn and subject to  
13 cross-examination.

14                  THE COURT: Right.

15                  MR. MORAN: So it may be that it gets us --

16                  THE COURT: But the two of you are going to have to  
17 agree on -- not necessarily agree. I always welcome  
18 opportunities to explore the law of collateral estoppel and res  
19 judicata generally. And the defendant was a party in the case,  
20 and presumably it can be adduced against him there as an  
21 admission or whatever, but that he had a full opportunity to  
22 dispute the matter. And presumably there's some sort of final  
23 order here that it could depend on, and it's either appealable  
24 or not. But I don't really want to get into all of that unless  
25 it's necessary. It may be. But you're going -- the two of you

1 are going to have to talk this through.

2 MS. MINER: Your Honor, if I may.

3 THE COURT: Yes.

4 MS. MINER: I think one thing we agree on from a brief  
5 conversation is that we need the transcript first before we can  
6 decide anything.

7 THE COURT: Yes, that's fine. But we're going to do  
8 this in an orderly fashion, and I'm going to be provided with  
9 the information I think is necessary, and meanwhile of course  
10 the defendant is going to be filing his two financial  
11 statements with the Probation Office.

12 MS. MINER: Yes, Your Honor. When I was raising the  
13 issue of the transcript, Your Honor wanted us both to say what  
14 witnesses we want by next Tuesday --

15 THE COURT: You tell me when you --

16 MS. MINER: If we could have a week after we get the  
17 transcript.

18 THE COURT: Okay.

19 MR. MORAN: Yes. So I think the first step, Your  
20 Honor, is for me, and I will endeavor to do this today, perhaps  
21 Attorney Wallace will help us, is order the transcripts.

22 THE COURT: Here is what I want -- not "here is what I  
23 want," but here is what would move it along. Just tell me next  
24 week what you think the likely timeline is for being able to  
25 say, "Here is what we want to do with witnesses," and then

1 we'll try to fill it in.

2                   But I raised my eyebrows at eight weeks. Now I'm not  
3 raising my eyebrows at eight weeks. This may take time for  
4 preparation, but in any event --

5                   MR. MORAN: Understood, Your Honor. I think we are in  
6 agreement about the first couple of steps, and Ms. Miner and I  
7 have had a good relationship on this case. We, as always, will  
8 work to see if we can at least narrow issues.

9                   THE COURT: I understand that. I understand the  
10 respective responsibilities to represent your clients,  
11 respective clients in this case. On the other hand, I have to  
12 sign a judgment. And I'm not signing a judgment until I'm  
13 satisfied that I know all that I need to know to enter that  
14 judgment.

15                   This has brought home what we all really know, is that  
16 there is rarely a careful analysis of the financial statements  
17 that people submit, just isn't looked at. That doesn't mean  
18 there shouldn't be. It just means that there are resources  
19 allocation problems that everybody has. I do, too. But  
20 ultimately, my resource allocation problems are I'll do  
21 whatever I have to do to get this right.

22                   MR. MORAN: I agree, Your Honor. I'll say in 15  
23 years, this is the first time I've ever had access, I've ever  
24 seen the underlying data.

25                   THE COURT: Right. And for good and sufficient

1 reasons, probation files are not turned over to the parties.  
2 Probation has its own protocols and so on. And that's the  
3 reason that I'm maintaining under seal Exhibit 11, I believe,  
4 of your supplemental memorandum, because that's a Probation  
5 Office document arising in the context of the Presentence  
6 Report. And I will, to the degree that I can, preserve the  
7 integrity of that, making sure that the parties anyway have a  
8 chance to know what it is that I'm being exposed to.

9 So I guess the way I'm leaving it is I will make sure  
10 that the orders of forfeiture have been signed and are entered  
11 and they're liquidated and provide a figure. I have a figure  
12 with respect to restitution that the parties have agreed on.  
13 It seems reasonable, but I wanted to be sure that I had Victim  
14 2 reduced to a monetizeable figure, particularly in light of  
15 the inability to recover on that.

16 I haven't finally decided restitution, but that seems  
17 like the figure that we're going to be dealing with. And of  
18 course we have the special assessment. The government has  
19 recommended no fine. I don't know what I think about that yet  
20 at this point. Maybe that's part of the plea agreement in any  
21 event.

22 MR. MORAN: That was because we had in mind the  
23 restitution and money adjustment as being --

24 THE COURT: Right.

25 MR. MORAN: -- important.

1                   THE COURT: The concern always in financial matters is  
2 that what you have is an efficient breach. Someone manages to  
3 extract monies that don't belong to them. That's what  
4 restitution is for. And then if they get caught, they provide  
5 the restitution, but they don't face criminal sanction in the  
6 form of fine.

7                   There are reasons for that. Sometimes restitution is  
8 beyond the capability of a defendant and those who support him  
9 to provide. This doesn't appear to me to be that case. So I  
10 leave open the question of fine until the parties are clear  
11 about that.

12                  MR. MORAN: Your Honor, I have one further request and  
13 a question.

14                  MS. MINER: Me, too.

15                  MR. MORAN: On page 7 of my memorandum, I did ask that  
16 Your Honor add a condition of the -- he would remain under  
17 presentencing release, I presume.

18                  THE COURT: Yes.

19                  MR. MORAN: I would ask that Your Honor might impose a  
20 condition, the wording is on page 7 of my memorandum, that he  
21 provide the inventory and accounting, which are two separate  
22 documents, to the probate and family court.

23                  MS. MINER: Your Honor, I thought that's what we were  
24 doing here?

25                  THE COURT: Pardon me?

1 MS. MINER: I thought that's what we were doing here.

2 THE COURT: I think, here is my view, that should be  
3 provided, but to me. If the probate and family court hasn't  
4 bothered to get it, then they can do whatever they want on  
5 that. But this is a proceeding for the sentencing of this  
6 defendant to take into consideration potential violations of  
7 pretrial conditions and to also address the question clear in  
8 my mind of the degree of culpability.

9 Now, the defendant may say, "I've got a Fifth  
10 Amendment right on that."

11 MR. MORAN: Yes, Your Honor is correct. At the same  
12 time, he's under an obligation to a separate, a court of a  
13 separate sovereign. I think Your Honor could order him to obey  
14 the obligations he owes to that sovereign regardless of whether  
15 the --

16 THE COURT: Has that court entered an order that he  
17 has to complete and sign the inventory?

18 MR. MORAN: Yes.

19 THE COURT: And what actions has the court taken to  
20 implement that?

21 MR. MORAN: The court did permit Attorney Wallace to  
22 make service by alternate means.

23 THE COURT: Right. So they've got service, presumably  
24 they believe that service has been made in that case. And has  
25 some order been entered by the court to deal with that?

1                   MR. MORAN: The order permitting service by alternate  
2 means was July 14, 2021.

3                   THE COURT: And that opens it up. But there generally  
4 is a specific order. And on something like this, there is an  
5 opportunity for the party to respond to the specific order. In  
6 any event, I'm not aware of any order that he has not complied  
7 with in the state court that I should be implementing. I am of  
8 the view that I should have all of this material but in this  
9 case.

10                  MR. MORAN: Separate from --

11                  MS. MINER: Your Honor, I can make this easy. We'll  
12 give it to the probate court at the same time we give it to  
13 you.

14                  THE COURT: Fine, that's fine with me. So I will  
15 receive as an additional condition a complete, signed, dated  
16 inventory of the estate of Thomas Morecroft Walshe as the  
17 defendant is aware of it and that he will render an account  
18 with that respect as called for by, too, for me. And I take  
19 the representation that he's going to be doing that in the  
20 state court as well, which of course he should, should have.

21                  MR. MORAN: My question, Your Honor, is, if it would  
22 be possible, I've spoken to counsel for at least one of the  
23 victims who was interested in having the money released as soon  
24 as possible. I don't know if -- it sounds like there will be a  
25 certain amount of money that's been credited to the District

1 Court. I don't know if that money can be the process to --

2 THE COURT: Well, we'll see. I mean, all of a sudden  
3 the victims are quite interested in their money. They're not  
4 interested in participating in restorative justice issues.  
5 They are not interested in appearing.

6 I understand, you know, victims have different views  
7 about this. On the other hand, I'm not a collection agent. My  
8 principal responsibility is to ensure that the degree of  
9 culpability that the defendant has is reflected properly in a  
10 judgment in the court. That includes restitution, of course.  
11 But we're not here dealing with victims as a collection agency  
12 at this point. So maybe that can be paid out but not out of  
13 this court's registry at this time.

14 MR. MORAN: I do want to add, Your Honor, to suggest  
15 the victims have not been interested would be wrong. They are  
16 very interested.

17 THE COURT: They are interested in certain aspects of  
18 the whole process of why it is that victims are provided with  
19 their opportunity to be heard. And we try as best we can to  
20 honor the victims' choices, and I do. They don't want to  
21 appear, they don't want to engage in questions of restorative  
22 justice, that's their choice. And there are reasons why  
23 someone would be embarrassed to be a victim under these  
24 circumstances.

25 MR. MORAN: There is also issues, at the same time,

1 Your Honor, that one victim lives in Korea and one victim lives  
2 in France and one victim lives in California, and it's a  
3 pandemic.

4 THE COURT: All of that is true, but that doesn't mean  
5 they're on the installment plan for payment of restitution.

6 MR. MORAN: No. You're absolutely correct, Your  
7 Honor. That's why I phrased it as a question and not a  
8 request. I did feel like one of my obligations as counsel for  
9 the government is to --

10 THE COURT: You discharged your obligation, and the  
11 answer to your question is another question: When are we going  
12 to get this resolved finally? And that's what I'm moving  
13 toward here as promptly as I can in fairness to the parties  
14 with an opportunity for the parties, including the defendant,  
15 to think about what is actually available for purposes of  
16 restitution and whether or not that restitution can be paid  
17 before we reach these issues.

18 That doesn't mean that I'm not going to be dealing  
19 with questions of whether or not there was money  
20 misappropriated in connection with the estate, but it does  
21 affect the question of recognition of his responsibilities,  
22 timely or not. But I leave that open.

23 I'm simply saying here is the structure that we're  
24 going to have for this, and it doesn't include, as I said,  
25 colloquially but I think accurately, installment payment of

1       restitution at the instance of victims who I understand have  
2       limitations of various kinds, including ones having to do with  
3       travel and that sort of thing but other concerns that have been  
4       expressed in the papers here.

5                    MR. MORAN: Thank you, Your Honor. That was it.

6                    MS. MINER: Your Honor, I have two questions for you.

7                    THE COURT: Right.

8                    MS. MINER: One, with respect to the treasury check,  
9       with respect to the treasury check, I presume that that has  
10      been cashed and it goes towards restitution.

11                  THE COURT: It's been held, I think. Ms. Beatty, do  
12      you know the answer to that, what's transpired with that?

13                  (Court and deputy clerk confer.)

14                  THE COURT: We'll double-check to see what the story  
15      is.

16                  MS. MINER: We just hope that those funds, which  
17      everybody now admits are available, goes towards restitution.

18                  THE COURT: I think that's right.

19                  MS. MINER: Thank you. The second question, Your  
20      Honor, the last time you were here you prohibited me or any  
21      representative of Mr. Walshe from contacting the Hingham Bank.  
22      I presume now I can contact the Hingham Bank.

23                  THE COURT: The bank?

24                  MS. MINER: The Hingham Savings Bank.

25                  THE COURT: Yes, you may. Now we're on to questions

1 of developing evidence in the case, and I don't think there's a  
2 problem with that at this point. We've now got a broad outline  
3 of what the issues are.

4 MS. MINER: Thank you. I just wanted to be clear.

5 THE COURT: Okay. All right. So I'll look forward to  
6 a preliminary idea of what the scheduling is going to be in  
7 this case, and we'll get to it as promptly as we can after  
8 consideration of the due process rights that all of us have an  
9 obligation to adhere to. All right. We will be in recess.

10 (Adjourned, 11:52 a.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER  
23 I, Kelly Mortellite, Registered Merit Reporter  
4 and Certified Realtime Reporter, in and for the United States  
5 District Court for the District of Massachusetts, do hereby  
6 certify that the foregoing transcript is a true and correct  
7 transcript of the stenographically reported proceedings held in  
8 the above-entitled matter to the best of my skill and ability.9 Dated this 17th day of June, 2022.10  
11 /s/ Kelly Mortellite12 \_\_\_\_\_  
13 Kelly Mortellite, RMR, CRR  
14 Official Court Reporter15  
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